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11 CARLTON CURTIS COLEMAN

12 UNITED STATES DISTRICT COURT
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14 NORTHERN DISTRICT OF CALIFORNIA
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16 OAKLAND DIVISION

17 UNITED STATES OF AMERICA,
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19 Plaintiff,
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21 v.
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23 CARLTON CURTIS COLEMAN,
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25 Defendant.

Case No. 12 Cr. 246 (YGR)

STIPULATION AND ~~PROPOSED~~ ORDER
PURSUANT TO FEDERAL RULE OF
CRIMINAL PROCEDURE 35 TO CONFORM
WRITTEN JUDGMENT TO ORAL
PRONOUNCEMENT OF SENTENCE

Before the Honorable Yvonne Gonzalez Rogers
United States District Judge

STIPULATION

WHEREAS: the parties agree that the Judgment and Commitment, entered October 29, 2012, must as a matter of law conform to the Court's oral pronouncement of sentence, *see, e.g., United States v. Munoz-Dela Rosa*, 495 F.2d 253, 254-56 (9th Cir. 1974); *United States v. Jones*, —F.3d—, 2012 WL 4748824, *4 (9th Cir. 2012);

WHEREAS: defendant Carlton Coleman contends that the Judgment contains two errors subject to correction pursuant to Fed. R. Crim. P. 35, to wit:

(1) Special Condition of Supervised Release No. 3—pertaining to the disclosure of financial information—should be removed because it was not included in the Court's oral pronouncement of sentence, nor does Mr. Coleman recall mention of this condition by the Court, Government, or United States Probation at any time prior to the entry of the Judgment, *see United States v. Wise*, 391 F.3d 1027, 1032-33 (9th Cir. 2004); and

(2) Special Condition of Supervised Release No. 6—pertaining to law enforcement searches—should be modified because it does not conform to the Court's oral pronouncement of sentence, which, as Mr. Coleman recalls, would permit law enforcement to search Mr. Coleman with or without "probable" cause, a modifier absent from the written Judgment;

WHEREAS: the Government cannot respond to Mr. Carlton's contentions in the absence of the transcript;

WHEREAS: Mr. Carlton requested expedited production of the transcript on November 7, 2012; and

WHEREAS: Pursuant to Federal Rule of Criminal Procedure 35, any motion to correct the Judgment must be filed on or before November 9, 2012;

IT IS HEREBY STIPULATED AND AGREED that the Court may consider this Stipulation and [Proposed] Order as a timely filed motion to correct the Judgment pursuant to Federal Rule of Criminal Procedure 35;

IT IS FURTHER STIPULATED AND AGREED that the United States may provide any further position regarding Mr. Coleman's request for relief on or before November 20, 2012 or at such other time as necessary depending on the production of the transcript; and

1 IT IS FURTHER STIPULATED AND AGREED that upon reviewing the transcript from
2 the sentencing hearing and reviewing any further presentation by the parties, and upon
3 identifying material inconsistencies between the Judgment and oral pronouncement of sentence,
4 including those identified above, the parties respectfully request the Court to amend the
5 Judgment to conform to the oral pronouncement of sentence.

6 IT IS SO STIPULATED.

7 DATED: November 8, 2012

/s/

ETHAN A. BALOGH
JAY A. NELSON
Attorneys for Defendant Carlton Coleman

9 DATED: November 8, 2012

/s/

BRIGID MARTIN
Assistant United States Attorney

11 **CERTIFICATION**

12 By presenting the signatures set forth above, the filing attorney hereby certifies that he
13 has received written authorization to present this stipulation on behalf of both parties.
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~~[PROPOSED]~~ ORDER

Before the Court is the parties' Stipulation Pursuant to Federal Rule of Criminal Procedure 35 to Conform Written Judgment to Oral Pronouncement of Sentence ("Stipulation").

Based upon the foregoing Stipulation, and for good cause shown:

IT IS HEREBY ORDERED that the Stipulation shall be deemed a timely filed motion to correct the Judgment pursuant to Federal Rule of Criminal Procedure 35;

IT IS FURTHER ORDERED that the United States may provide any further position regarding Mr. Coleman's request for relief on or before November 20, 2012 or at such other time as necessary depending on the production of the transcript; and

IT IS FURTHER ORDERED that upon reviewing the transcript from the sentencing hearing and reviewing any further presentation by the parties, the Court shall amend the Judgment to conform in all material respects to the Court's oral pronouncement of sentence.

IT IS SO ORDERED.

DATED: November 16, 2012



THE HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE